



***EXECUTIVE
DIRECTOR'S
REPORT***

November 7, 2017

A.

ADMINISTRATIVE MATTERS

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
ADMINISTRATION COMMITTEE			
1. <u>Status Report Concerning Manufacturer and Distributor Compliance with Vehicle Code Sections 3064/3074 and 3065/3075 (Filing of Statutorily Required Schedules and Formulas)</u> Danielle Vare; Administration Committee	Annually letters are sent to all licensed manufacturers and distributors requesting copies of their current delivery and inspection obligations ("PDI"), PDI schedule of compensation, and warranty reimbursement schedule or formula.	January 2018	In progress. A status report concerning manufacturer and distributor compliance will be presented at the January 2018, General Meeting.
2. <u>Update Guide to the New Motor Vehicle Board</u> Robin Parker; Administration Committee	Update the <i>Guide to the New Motor Vehicle Board</i> to incorporate statutory and regulatory changes.	January 2018	In progress. The revised Guide will be presented at the January 2018, General Meeting.
BOARD DEVELOPMENT COMMITTEE			
1. <u>Host Board Administrative Law Judge Roundtable</u> Robin Parker, Danielle Vare, Board Development Committee	Host a Board Administrative Law Judge ("ALJ") Roundtable for purposes of education and training. Provide an opportunity for the ALJs to meet in an informal setting, exchange ideas, and offer suggestions to improve the case management hearing process.	To be determined	In progress. An ALJ Roundtable will be scheduled in late 2017 or early 2018, once the new ALJs are hired.

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
2. <u>Schedule Board Member Education Presentations</u> Danielle Vare; Board Development Committee	Develop a schedule for prioritizing topics and speakers for Board member education presentations for upcoming meetings.	November 2017	In progress. A schedule of topics and speakers for Board member education will be presented for discussion at the November 7, 2017, General Meeting.
<u>Solon C. Soteris Employee Recognition Award Recipient</u> Bill Brennan; Board Development Committee	Compile the nominations provided by staff and select a nominee for the Solon C. Soteris Employee Recognition Award.	July 2017	<u>Completed</u> At the July 19, 2017, General meeting, the members selected Danielle Vare as the recipient of the Employee Recognition Award.
FISCAL COMMITTEE			
1. <u>Quarterly Fiscal Reports</u> Dawn Kindel, Suzanne Luke; Fiscal Committee	Quarterly fiscal reports will be provided to the Committee and scheduled for upcoming Board meetings.	Ongoing	In progress. The 1 st , 2 nd and 3 rd quarter reports for fiscal year 2016-2017 were presented at the January 18, 2017, March 15, 2017, and July 19, 2017, General Meetings. The 4 th quarter report is set for January 2018.
2. <u>Report Concerning Out-of-State Travel Plans</u> Dawn Kindel; Fiscal Committee	The staff will provide a report concerning the out-of-state travel plans for fiscal year 2017-2018.	January 2018	In progress. A report will be presented for consideration at the January 2018, General Meeting.

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
<u>Status Report on the Collection of Fees for the Arbitration Certification Program</u> Dawn Kindel, Suzanne Luke; Fiscal Committee	The staff will provide a report concerning the annual fee collection for the Department of Consumer Affairs, Arbitration Certification Program.	July 2017	<u>Completed</u> At the July 19, 2017, General Meeting, the members were provided with an update concerning the collection of the ACP fees.
<u>Proposed Board Budget for the Next Fiscal Year</u> Dawn Kindel, Suzanne Luke; Fiscal Committee	The staff in conjunction with the Fiscal Committee will discuss and consider the Board's proposed Budget for fiscal year 2017-2018.	July 2017	<u>Completed</u> The 2017-2018 Budget of \$1.8 million was adopted by the Board at the July 19, 2017, General Meeting.
<u>Annual Discussion and Consideration of the Methods for Determining Board Fees</u> Bill Brennan; Fiscal Committee	In response to Board Member Brooks' request, a memorandum outlining how the Board fees are calculated every year to ensure the fees are not a tax and are cost-justified, will be presented for Board consideration.	July 2017	<u>Completed</u> At the July 19, 2017, General Meeting, the staff indicated that the Board funds are properly classified as fees, and the method for determining fee schedules is fair and reasonable; they are not a tax.
GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE			
<u>1. Host Industry Roundtable</u> Bill Brennan, Dawn Kindel, Danielle Vare; Government and Industry Affairs Committee	Host the traditional Industry Roundtable with representatives from car, truck, motorcycle and recreational vehicle manufacturers/distributors, dealers, in-house and outside counsel, associations and other government entities.	May 2018	In progress. The Industry Roundtable is set for May 17, 2018, in Sacramento.

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
POLICY AND PROCEDURE COMMITTEE			
<u>1. Amend the Peremptory Challenge Regulation to Limit to Merits Hearings and Make Other Changes Consistent with the Office of Administrative Hearings</u> Robin Parker; Policy and Procedure Committee	In an effort to continue to improve and clarify the Board's case management processes, the Board staff has proposed amending the peremptory challenge regulation to eliminate the requirement of a declaration of prejudice and use language nearly identical to the Office of Administrative Hearings ("OAH"). It is necessary for the Board to deviate slightly from OAH's regulation due to the increased number of law and motion matters filed with the Board and the limited number of ALJs available to hear such motions. Given these differences, the proposed amendments bar peremptory challenges of law and motion and settlement conference ALJs in order to expedite and optimize proceedings held before the Board.	November 2017	In progress. The draft proposed regulations will be considered at the November 7, 2017, General Meeting.
<u>2. Proposed Revisions to the Assignment of Cases to Board Administrative Law Judges</u> Robin Parker; Policy and Procedure Committee	Given ALJ Wong's success at settling cases, the following proposed revisions are proposed: (1) Designate ALJ Wong the Mandatory Settlement Conference Judge; (2) Create an Alternative MSC Judge Assignment Log in the event ALJ Wong is unavailable; (3) Remove ALJ Wong from the Alternative Merits Judge Assignment Log; and (4) Remove ALJ Wong from the Alternative Law Motion Hearing Judge Assignment Log.	November 2017	In progress. A memorandum will be presented for consideration at the November 7, 2017, General Meeting.

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
3. <u>Update the Informational Guide for Manufacturers and Distributors</u> Robin Parker; Policy and Procedure Committee	Update the <i>Informational Guide for Manufacturers and Distributors</i> .	January 2018	In progress. The updated Guide will be considered at the January 2018, General Meeting.
4. <u>Update the Export or Sale-For-Resale Prohibition Policy Guide</u> Robin Parker; Policy and Procedure Committee	Update the <i>Export or Sale-For-Resale Prohibition Policy Guide</i> for Vehicle Code section 3085 protests filed by an association, as defined.	January 2018	In progress. The Guide will be considered at the January 2018, General Meeting.
5. <u>Report on the Assignment of Cases to Board Administrative Law Judges</u> Danielle Vare; Policy and Procedure Committee	Annual report on the assignment of cases to Board Administrative Law Judges ("ALJs").	January 2018	In progress. A report on the assignment of cases to Board ALJs will be presented at the January 2018, General Meeting.
6. <u>Annual Rulemaking Calendar</u> Danielle Vare; Policy & Procedure Committee	Consideration of the annual rulemaking calendar.	January 2018	In progress. The 2018 Rulemaking Calendar will be considered at the January 2018, General Meeting.

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
<u>Extension of Time for Administrative Law Judge Wong to Preside over all Mandatory Settlement Conferences</u> Robin Parker; Policy and Procedure Committee	In June 2016, due to a shortage of Administrative Law Judges (“ALJ”) and the number of Merits Hearings tentatively scheduled, the Board assigned all Mandatory Settlement Conferences to ALJ Wong for an interim period of six-months. A six-month extension was granted at the January 18, 2017, General Meeting. The staff is requesting an additional six month extension to allow recently hired ALJs to be trained.	July 2017	<u>Completed</u> At the July 19, 2017, General Meeting, the members extended ALJ Wong’s appointment as the designated settlement judge for an additional 6-month period.
<u>Update New Motor Vehicle Board Administrative Law Judges Benchbook</u> Robin Parker; Policy and Procedure Committee	Update the <i>New Motor Vehicle Board Administrative Law Judge’s Benchbook</i> .	July 2017	<u>Completed</u> The <i>Benchbook</i> was adopted at the March 15, 2017, General Meeting, however, the Board lacked a quorum so it was adopted at the July 19, 2017, General Meeting.
EXECUTIVE COMMITTEE			

B. CASE MANAGEMENT

CASE VOLUME

JULY 6, 2017 THROUGH OCTOBER 23, 2017

VEHICLE CODE SECTION	DESCRIPTION	NEW CASES	RESOLVED CASES	PENDING CASES
3060	Termination	7	6	14
3060	Modification	3	4	26
3062	Establishment	4	2	2
3062	Relocation	0	0	0
3062	Off-Site Sale	0	0	0
3064	Delivery/Preparation Obligations	0	0	0
3065	Warranty Reimbursement	0	1	2
3065.1	Incentive Program Reimbursement	2	0	2
3070	Termination	0	0	0
3070	Modification	0	0	0
3072	Establishment	0	0	0
3072	Relocation	0	0	0
3072	Off-Site Sale	0	0	0
3074	Delivery/Preparation Obligations	0	0	0
3075	Warranty Reimbursement	0	0	0
3076	Incentive Program Reimbursement	0	0	0
3085	Export or Sale-for-Resale	0	0	1
3050(c)	Petition	0	0	0
3050(b)	Appeal	0	0	0
TOTAL CASES:		16	13	47

PENDING CASES

BY CASE NUMBER

ABBREVIATIONS			
ALJ	Administrative Law Judge	Bd.Mtg.	Board Meeting
HRC	Hearing Readiness Conference	IFU	Informal Follow-Up
MH	Merits Hearing	CMH	Continued Merits Hearing
RMH	Resumed Merits Hearing	MSC	Mandatory Settlement Conference
CMSC	Continued Mandatory Settlement Conference	RMSC	Resumed Mandatory Settlement Conference
MTCP	Motion to Compel Production	MTC	Motion to Continue
MTD	Motion to Dismiss	PHC	Pre-Hearing Conference
CPHC	Continued Pre-Hearing Conference	RPHC	Resumed Pre-Hearing Conference
PD	Proposed Decision	POS	Proof of Service
PSDO	Proposed Stipulated Decision and Order	ROB	Ruling on Objections
CROB	Continued Ruling on Objections	RROB	Resumed Ruling on Objections
SC	Status Conference	CSC	Continued Status Conference
RFD	Request for Dismissal		
* Consolidated, non-lead case			

Protests

CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
1. PR-2403-14 8-8-14	HRC: 1-9-18 MH: 2-19-18 (8 days)	Downtown Auto Center dba Downtown Subaru v. Subaru of America, Inc.	P: Michael Sieving R: Mo Sanchez, Lisa Gibson, Kevin Colton	Termination
2. PR-2422-15 3-3-15	RSC w/ALJ: 12-1-17 Settlement is pending	Walter Timmons Enterprises, Inc. dba Timmons Subaru v. Subaru of America, Inc.	P: Gavin Hughes R: Mo Sanchez, Lisa Gibson	Termination
3. PR-2453-15 12-15-15	Settlement is pending	Dick Browning, Inc., dba Browning Mazda, a California Corporation v. Mazda Motor of America, Inc., dba Mazda North American Operations, a California Corporation	P: Alton Burkhalter, Ros Lockwood R: Mo Sanchez, Lisa Gibson	Establishment

PENDING CASES

BY CASE NUMBER

CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
4. PR-2463-16 2-9-16	The Board determined JRLNA did not violate subdivision (y)(1) of Section 11713.3; the Proposed Decision Following Remand is Pending	California New Car Dealers Association v. Jaguar Land Rover North America, LLC	P: Halbert B. Rasmussen, Franjo Dolenac R: Colm Moran	Export or Sale-for-Resale Prohibition Policy
5. PR-2470-16 4-23-16	Matter is settling	Brown Automotive, Inc. dba Puente Hills Nissan v. Nissan North America, Inc.	P: Victor Danhi R: Mo Sanchez, Kevin Colton	Warranty
6. PR-2478-16 8-11-16	Motion to Stay Discovery: denied MTD under submission HRC: 1-5-18 MH: 2-5-18 (5 days)	West Covina Nissan, LLC v. Nissan North America, Inc.	P: Victor P. Danhi R: Mo Sanchez	Warranty
7. PR-2483-16 11-10-16	HRC: 11-2-17 PHC w/ALJ: 11-2-17 MH: 12-4-17 (10 days) (Hearing date changing due to peremptory challenge)	Folsom Chevrolet, Inc., dba Folsom Chevrolet v. General Motors, LLC	P: Bert Rasmussen, George Koumbis, Franjo Dolenac R: Mark Clouatre, Bob Davies	Termination
8. PR-2489-17 1-10-17	MSC: 11-3-17	Tulare SAG, Inc., dba Lampe Chrysler Dodge Jeep Ram v. FCA US LLC	P: Gavin Hughes, Robert Mayville R: Maile Solis, Randy Oyler, Bob Davies, Mary Stewart	Modification

PENDING CASES

BY CASE NUMBER

CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
9. PR-2491-17* 1-13-17	MSC: 11-3-17	Central Valley Automotive Inc., dba Central Valley Chrysler Jeep Dodge v. FCA US LLC	P: Gavin Hughes, Robert Mayville R: Maile Solis, Randy Oyler, Bob Davies, Mary Stewart	Modification
10. PR-2492-17* 1-18-17	MSC: 11-3-17	Ellis Family Stores, LLC, a California limited liability company, dba Fiat of Glendale v. FCA US LLC, a Delaware limited liability company	P: Tim Robinett R: Maile Solis, Randy Oyler, Bob Davies, Mary Stewart	Modification
11. PR-2393-17* 1-18-17	MSC: 11-3-17	Mossy Fiat v. FCA, US, LLC	P: Mark H. Nys R: Maile Solis, Randy Oyler, Bob Davies, Mary Stewart	Modification
12. PR-2494-17* 1-18-17	MSC: 11-3-17	Mossy Alfa Romeo v. FCA, US, LLC	P: Mark H. Nys R: Maile Solis, Randy Oyler, Bob Davies, Mary Stewart	Modification
13. PR-2495-17* 1-18-17	MSC: 11-3-17	Downtown Apex Motors LLC, dba Fiat Puente Hills v. FCA US LLC	P: Gavin Hughes, Robert Mayville R: Maile Solis, Randy Oyler, Bob Davies, Mary Stewart	Modification
14. PR-2496-17* 1-18-17	MSC: 11-3-17	Downtown Apex Motors LLC, dba Fiat LA v. FCA US LLC	P: Gavin Hughes, Robert Mayville R: Maile Solis, Randy Oyler, Bob Davies, Mary Stewart	Modification
15. PR-2497-17* 1-19-17	MSC: 11-3-17	SMAG LP dba Santa Maria FCA Dodge Jeep Ram Fiat v. Fiat Chrysler Automobiles US, LLC	P: Christian Scali, Bert Rasmussen R: Maile Solis, Randy Oyler, Bob Davies, Mary Stewart	Modification

PENDING CASES

BY CASE NUMBER

CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
16. PR-2498-17* 1-19-17	MSC: 11-3-17	AN F. Imports of Roseville, Inc. dba AutoNation Alfa Romeo and Fiat Roseville v. FCA US LLC	P: Gavin Hughes, Robert Mayville R: Maile Solis, Randy Oyler, Bob Davies, Mary Stewart	Modification
17. PR-2499-17* 1-19-17	MSC: 11-3-17	Stevens Creek Luxury Imports, Inc. dba AutoNation Alfa Romeo Stevens Creek v. FCA US LLC	P: Gavin Hughes, Robert Mayville R: Maile Solis, Randy Oyler, Bob Davies, Mary Stewart	Modification
18. PR-2500-17* 1-19-17	MSC: 11-3-17	AN F. Imports of Roseville, Inc. dba AutoNation Alfa Romeo and Fiat Roseville v. FCA US LLC	P: Gavin Hughes, Robert Mayville R: Maile Solis, Randy Oyler, Bob Davies, Mary Stewart	Modification
19. PR-2501-17 1-19-17	Case is tracking corresponding Alfa Romeo/Fiat matters	Stevens Creek Luxury Imports, Inc. dba AutoNation Maserati Stevens Creek v. Maserati North America, Inc.	P: Gavin Hughes, Robert Mayville R: Maile Solis, Randy Oyler, Bob Davies, Mary Stewart	Modification
20. PR-2502-17* 1-20-17	MSC: 11-3-17	Baker Motors, Inc., a California corporation, dba Bob Baker Fiat v. FCA US LLC, a Delaware limited liability company	P: Wade W. Paulson R: Maile Solis, Randy Oyler, Bob Davies, Mary Stewart	Modification
21. PR-2503-17* 1-20-17	MSC: 11-3-17	Baker Motors, Inc., a California corporation, dba Bob Baker Fiat Alfa Romeo v. FCA US LLC, a Delaware limited liability company	P: Wade W. Paulson R: Maile Solis, Randy Oyler, Bob Davies, Mary Stewart	Modification
22. PR-2504-17* 1-23-17	MSC: 11-3-17	Costa Arancione, LLC, a California limited liability company, dba Orange Coast Alfa Romeo and Fiat v. FCA, LLC	P: Gregory Ferruzzo R: Maile Solis, Randy Oyler, Bob Davies, Mary Stewart	Modification

PENDING CASES

BY CASE NUMBER

CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
23. PR-2505-17* 1-23-17	MSC: 11-3-17	Costa Arancione, LLC, a California limited liability company, dba Orange Coast Alfa Romeo and Fiat v. FCA, LLC	P: Gregory Ferruzzo R: Maile Solis, Randy Oyler, Bob Davies, Mary Stewart	Modification
24. PR-2506-17* 1-23-17	Case is tracking corresponding Alfa Romeo/ Fiat matters	Rusnak/Pasadena, dba Rusnak Maserati of Pasadena v. Maserati North America, Inc.	P: Christian Scali R: Maile Solis, Randy Oyler, Bob Davies, Mary Stewart	Modification
25. PR-2507-17* 1-23-17	MSC: 11-3-17	Rusnak/Pasadena dba Rusnak Alfa Romeo v. FCA US LLC	P: Christian Scali R: Maile Solis, Randy Oyler, Bob Davies, Mary Stewart	Modification
26. PR-2511-17* 1-23-17	MSC: 11-3-17	Niello Italian Imports, Inc., dba Niello Alfa Romeo v. FCA US LLC	P: Christian Scali R: Maile Solis, Randy Oyler, Bob Davies, Mary Stewart	Modification
27. PR-2512-17* 1-23-17	Case is tracking corresponding Alfa Romeo/ Fiat matters	Niello Italian Imports, Inc., dba Niello Maserati v. Maserati North America, Inc.	P: Christian Scali R: Maile Solis, Randy Oyler, Bob Davies, Mary Stewart	Modification
28. PR-2514-17 2-2-17	MSC: 11-3-17	HWM Auto Corp., dba McKevitt Fiat of Berkeley v. FCA US LLC	P: Gavin Hughes, Robert Mayville R: Maile Solis, Randy Oyler, Bob Davies, Mary Stewart	Modification
29. PR-2515-17 2-2-17	MSC: 11-3-17	HWM Auto Corp., dba McKevitt Alfa Romeo v. FCA US LLC	P: Gavin Hughes, Robert Mayville R: Maile Solis, Randy Oyler, Bob Davies, Mary Stewart	Modification
30. PR-2517-17 3-3-17	MH: 11-13-17 (13 days)	Sunnyvale Automotive, Inc., dba Sunnyvale Ford Lincoln v. Ford Motor Company	P: Gavin Hughes, Robert Mayville R: Colm Moran	Termination

PENDING CASES

BY CASE NUMBER

CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
31. PR-2518-17 4-3-17	HRC: 4-24-18 MH: 5-21-18 (15 days)	Shingle Springs Imports, Inc. dba Shingle Springs Honda v. American Honda Motor Co., Inc.	P: Gavin Hughes, Robert Mayville R: Patricia Britton, S. Keith Hutto, Steve McKelvey, Steven McFarland	Termination
32. PR-2519-17 4-24-17	RPHC w/ALJ: 11-30-17	Vespa San Mateo v. Piaggio Group America's Inc.	P: Philip Branzuela, in Pro Per R: Gennaro DellaCorte	Termination
33. PR-2520-17 5-2-17	Parties working on settlement Proposed MH: 5-14-18 (15 days)	Par 3 Motors, Inc., dba Concord Mitsubishi v. Mitsubishi Motors North America, Inc.	P: Gavin Hughes, Robert Mayville R: Mo Sanchez	Termination
34. PR-2521-17 5-11-17	ROB: 11-7-17 HRC: 1-29-18 MH: 2-26-18 (7 days)	Alvarez Motor Cars, Inc. dba Alvarez Jaguar, a California corporation v. Jaguar Land Rover North America, LLC	P: Christian Scali, Bert Rasmussen, Franjo Dolenac R: Colm Moran	Termination
35. PR-2523-17 6-12-17	Parties are working on settlement	O'Gara Coach Company, LLC, a liability company, dba Aston Martin Beverly Hills v. Aston Martin Loganda of North America, Inc.	P: Christian Scali, Bert Rasmussen R: Colm Moran	Termination
36. PR-2524-17 7-14-17	Parties are working on settlement CPHC: 10-30-17	Western Truck Parts & Equipment Company LLC dba Western Truck Center v. Mack Trucks, Inc., a Pennsylvania corporation	P: W. Bruce Bercovich, Douglas A. Marshall R: Billy Donley, J. Keith Russell, Marcus McCutcheon	Modification
37. PR-2526-17 8-11-17	RMSC: Date pending	HTMC, LLC, dba Subaru El Cajon v. Subaru of America, Inc.	P: Gavin Hughes, Robert Mayville R: Maurice Sanchez, Lisa M. Gibson	Termination

PENDING CASES

BY CASE NUMBER

CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
38. PR-2529-17 9-7-17	MSC: 10-31-17	Walker Management, Inc. dba Good Times Kawasaki-Suzuki v. Suzuki Motor of America, Inc.	P: Bert Rasmussen R: Nancy Tayui	Establishment
39. PR-2530-17 9-15-17	MTD: 1-9-18	Asian Pacific Industries, Inc., dba Jaguar Land Rover Stevens Creek v. Jaguar Land Rover North America, LLC (Jaguar)	P: Gavin Hughes, Robert Mayville R: Colm Moran, John J. Sullivan	Modification
40. PR-2531-17* 9-15-17	MTD: 1-9-18	Asian Pacific Industries, Inc., dba Jaguar Land Rover Stevens Creek (Jaguar) v. Jaguar Land Rover North America, LLC	P: Gavin Hughes, Robert Mayville R: Colm Moran, John J. Sullivan	Franchisor Incentive
41. PR-2532-17* 9-15-17	MTD: 1-9-18	Asian Pacific Industries, Inc., dba Jaguar Land Rover Stevens Creek (Land Rover) v. Jaguar Land Rover North America, LLC	P: Gavin Hughes, Robert Mayville R: Colm Moran, John J. Sullivan	Modification
42. PR-2533-17* 9-15-17	MTD: 1-9-18	Asian Pacific Industries, Inc., dba Jaguar Land Rover Stevens Creek (Land Rover) v. Jaguar Land Rover North America, LLC	P: Gavin Hughes, Robert Mayville R: Colm Moran, John J. Sullivan	Franchisor Incentive
43. PR-2534-17 9-22-17	MTD: 11-9-17	Porter Auto Group, L.P. v. FCA US LLC (Chrysler)	P: Michael Sieving R: Michael S. Elvin, Jack O. Snyder	Termination
44. PR-2535-17* 9-22-17	MTD: 11-9-17	Porter Auto Group, L.P. v. FCA US LLC (Dodge)	P: Michael Sieving R: Michael S. Elvin, Jack O. Snyder	Termination

PENDING CASES

BY CASE NUMBER

CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
45. PR-2536-17* 9-22-17	MTD: 11-9-17	Porter Auto Group, L.P. v. FCA US LLC (Jeep)	P: Michael Sieving R: Michael S. Elvin, Jack O. Snyder	Termination
46. PR-2537-17* 9-22-17	MTD: 11-9-17	Porter Auto Group, L.P. v. FCA US LLC (Ram)	P: Michael Sieving R: Michael S. Elvin, Jack O. Snyder	Termination
47. PR-2539-17 10-13-17	PHC 10-31-17	Barber Group, Inc., a California corporation doing business as Barber Honda v. American Honda Motor Co., Inc., a California corporation	P: Grover H. Waldon, Charles D. Melton R: Patricia Britton, S. Keith Hutto, Steven B. McFarland	Establishment

Petitions

CASE NUMBER/ DATE FILED	STATUS	PETITION	COUNSEL
		-----None Pending----	

Appeals

CASE NUMBER/ DATE FILED	STATUS	APPEAL	COUNSEL
		-----None Pending----	

C. JUDICIAL REVIEW

Judicial Review

Either the Protestant/Petitioner/Appellant or Respondent seeks judicial review of the Board's Decision or Final Order by way of a petition for writ of administrative mandamus (Code of Civil Procedure, § 1094.5). The writ of mandamus may be denominated a writ of mandate (Code of Civil Procedure, § 1084).

1. FIAT CHRYSLER AUTOMOBILES US LLC v. CALIFORNIA NEW MOTOR VEHICLE BOARD; DEPENDABLE DODGE, INC., Real Party in Interest
California Superior Court, Sacramento County Case No. 34-2017-80002584
New Motor Vehicle Board No. CRT-273-17
Protest Nos. PR-2435-15 and PR-2436-15

At the March 15, 2017, General Meeting, the Public Members of the Board adopted ALJ Kymberly Pipkin's Proposed Decision as the Board's final Decision. The Decision sustained the consolidated Protests and did not permit FCA to terminate Dependable's RAM and Dodge franchises. On April 24, 2017, Fiat Chrysler Automobiles US, LLC's ("FCA") filed a "Petition for Writ of Administrative Mandate and Writ of Traditional Mandate." FCA contends that the ALJ denied it a fair hearing and prejudicially abused her discretion by failing to proceed in the manner required by law, making findings unsupported by substantial evidence, and reaching a decision unsupported by findings.

FCA seeks: (1) issuance of a writ of administrative mandamus or alternatively traditional mandate, directing the Board to set aside and vacate its Decision and to adopt and issue a new and different decision overruling Dependable's protests and allowing the termination of its FCA Dealer Agreements. Alternatively, (2) issuance of a writ of administrative mandamus or traditional mandate, directing the Board to set aside and vacate its Decision and to order a new hearing with a new ALJ.

Kathryn Doi, Vice Board President, has determined that there is not a state interest at issue in the writ so the Board will not participate via the Attorney General's Office.

Dependable Dodge, Inc., ("Dependable") filed its answer on May 30, 2017. *The parties stipulated and the court ordered the following briefing schedule: FCA's opening brief is due November 15, 2017; Dependable's opposition is due December 7, 2017; and FCA's reply brief is due December 18, 2017. The hearing is set for January 26, 2018, at 9:00 a.m. in Department 31.*

2. ADRENALINE POWERSPORTS, a California Partnership v. NEW MOTOR VEHICLE BOARD, a California State Agency; POLARIS SALES, INC., Real Party in Interest
California Superior Court, Sacramento County Case No. 34-2015-80002155
New Motor Vehicle Board No. CRT-271-15
Protest No. PR-2418-15

At the June 17, 2015, General Meeting, the Public Members granted Polaris Sales, Inc.'s ("Polaris") Motion to Dismiss. On August 3, 2015, Adrenaline Powersports ("Adrenaline") filed a Petition for Writ of Administrative Mandamus. Adrenaline contends in its Writ that by adopting the Proposed Order, the Board has committed a prejudicial abuse of discretion in that the Board has not proceeded in the manner required by law, the Decision is not supported by the findings, and the findings are not supported by the evidence. Adrenaline seeks a peremptory writ directing the Board to set aside and vacate its Decision of June 17, 2015, and to adopt a new decision denying Polaris' motion to dismiss.

Glenn Stevens, Board President, has determined that there is not a state interest at issue in the writ so the Board will not participate via the Attorney General's Office.

Respondent filed its Answer on October 26, 2015. On August 2, 2017, Adrenaline filed a Request for Dismissal. On August 8, 2017, the court disposed of this case with disposition of the Request for Dismissal. This matter is closed and will be taken off future Executive Director's Reports.

3. TOYOTA MOTOR SALES, U.S.A., INC., a California corporation v. CALIFORNIA NEW MOTOR VEHICLE BOARD, a California state agency; PUTNAM MOTORS, INC. dba PUTNAM LEXUS, a California corporation, Real Party in Interest

California Superior Court, Sacramento County Case No. 34-2015-80002081
New Motor Vehicle Board No. CRT-270-15

By letter dated March 20, 2015, Toyota Motor Sales, U.S.A., Inc. ("Toyota") requested that the Board grant it permission to conduct a warranty audit from September 2010 to the present "based on a pattern of false claims for warranty and recall service submitted by Putnam Motors, Inc. dba Putnam Lexus ('Putnam Lexus') with the intent to defraud Lexus and Lexus customers." The period requested is beyond the 9 months provided for in Vehicle Code section 3065 and required a Board order. After a lengthy discussion, at the March 25, 2015, General meeting, the Public Members denied Toyota's request.

On April 24, 2015, Toyota filed a Petition for Writ of Administrative Mandate in the Sacramento County Superior Court. Toyota contends that the Board's denial of its "request for an extended audit constitutes an abuse of discretion because the Board's Order ... [was] not supported by the evidence and because the Board has unlawfully adopted unwritten standards that manufacturers allegedly must follow before obtaining [such] an order..." which, is a violation of the Administrative Procedure Act. Putnam Lexus filed its answer on June 8, 2015.

Glenn Stevens, Board President, has determined that there is not a state interest at issue in the writ so the Board will not participate via the Attorney General's Office.

This matter is fully briefed. The hearing originally scheduled for April 29, 2016, was continued to October 7, 2016, March 3, 2017, August 4, 2017, and then February 23, 2018, to allow the parties to continue settlement discussions.

4. ROADTREK MOTORHOMES, INC., Plaintiff v. CALIFORNIA NEW MOTOR VEHICLE BOARD, Defendant, MEGA RV CORP, d/b/a MCMAHON'S RV, Real Party in Interest.

California Superior Court, Sacramento County Case No. 34-2012-80001301
New Motor Vehicle Board Case No. CRT-264-12
Protest No. PR-2201-10

At the Board's regularly scheduled meeting on August 23, 2012, the Public and Dealer Members decided to sustain the protest filed by Protestant Mega RV Corp, a California corporation doing business as McMahon's RV (Mega) [Protest No. PR-2201-10 (Colton/Irvine)]. At the Board's regularly scheduled meeting on October 17, 2012, the Board adopted its written Order Confirming Decision to Sustain Protest. The Board found that Roadtrek Motorhomes, Inc. (Roadtrek) was statutorily barred from modifying the franchise of Mega RV for its Irvine location inasmuch as Roadtrek had not complied with Vehicle Code section 3070(b)(1).

On October 30, 2012, Roadtrek filed a petition in the California Superior Court for Sacramento County seeking a writ of administrative mandate. The petition asks the Court to, (a) declare, decree, and adjudge that the Board prejudicially abused its discretion based on Roadtrek's contention that the Board's finding on Protest No. PR-2201-10 is not supported by substantial evidence in light of the whole record or the law, (b) declare, decree, and adjudge that applicable Vehicle Code sections are unconstitutional as applied under, without limitation, the Commerce Clause, Contracts Clause, and Due Process Clause of the California and United States Constitutions, (c) issue a writ of mandate (judgment) commanding the Board to set aside its Decision, (d) grant Roadtrek an immediate stay of enforcement of the Board's Decision, including the Board's decision to refer the matter to the DMV, (e) award Roadtrek its costs, and (f) grant Roadtrek such other and further relief the Court deems appropriate, proper, or in the interests of justice.

It has been determined that there is a state interest at issue in the writ so the Board will participate via the Attorney General's Office.

On November 20, 2012, the Court ordered consolidation, for all purposes, of cases numbered 34-2012-80001280; 34-2012-80001281; 34-2012-80001300; 34-2012-80001301; and 34-2012-130525, and the Court designated case number 34-2012-80001280 as the lead case. The Court also ordered the consolidated cases transferred to the Superior Court of California for the County of Orange.

All further reporting of this case will be made under CRT-258-12, below.

5. ROADTREK MOTORHOMES, INC., Plaintiff v. CALIFORNIA NEW MOTOR VEHICLE BOARD, Defendant, MEGA RV CORP, d/b/a MCMAHON'S RV, Real Party in Interest.

California Superior Court, Sacramento County Case No. 34-2012-80001300
New Motor Vehicle Board Case No. CRT-263-12
Protest No. PR-2199-10

At the Board's regularly scheduled meeting on August 23, 2012, the Public and Dealer Members, decided to sustain the protest filed by Protestant. At the Board's regularly scheduled meeting on October 17, 2012, the Board adopted its written Order Confirming Decision to Sustain Protest. The Board found that Roadtrek was statutorily barred from modifying the franchise of Mega RV for its Colton location inasmuch as Roadtrek had not complied with Vehicle Code section 3070(b)(1).

On October 30, 2012, Roadtrek filed a petition in the California Superior Court for Sacramento County seeking a writ of administrative mandate. The petition asks the Court to, (a) declare, decree, and adjudge that the Board prejudicially abused its discretion based on Roadtrek's contention that the Board's finding on Protest No. PR-2199-10 is not supported by substantial evidence in light of the whole record or the law, (b) declare, decree, and adjudge that applicable Vehicle Code sections are unconstitutional as applied under, without limitation, the Commerce Clause, Contracts Clause, and Due Process Clause of the California and United States Constitutions, (c) issue a writ of mandate (judgment) commanding the Board to set aside its Decision, (d) grant Roadtrek an immediate stay of enforcement of the Board's Decision, including the Board's decision to refer the matter to the DMV, (e) award Roadtrek its costs, and (f) grant Roadtrek such other and further relief the Court deems appropriate, proper, or in the interests of justice.

It has been determined that there is a state interest at issue in the writ so the Board will participate via the Attorney General's Office.

On November 20, 2012, the Court ordered consolidation, for all purposes, of cases numbered 34-2012-80001280; 34-2012-80001281; 34-2012-80001300; 34-2012-80001301; and 34-2012-130525, and the Court designated case number 34-2012-80001280 as the lead case. The Court also ordered the consolidated cases transferred to the Superior Court of California for the County of Orange.

All further reporting of this case will be made under CRT-258-12, below.

6. ROADTREK MOTORHOMES, INC., Plaintiff v. CALIFORNIA NEW MOTOR VEHICLE BOARD, Defendant, MEGA RV CORP. d/b/a MCMAHON'S RV, Real Party in Interest.

California Superior Court, Sacramento County Case No. 34-2012-00130525
New Motor Vehicle Board Case No. CRT-261-12
Protest No. PR-2233-10

Protestant Mega filed protest number PR-2233-10, with the Board on May 11, 2010. The protest alleged that Roadtrek failed to give Mega and the Board timely notice of Roadtrek's intention to establish an additional Roadtrek dealer in Colton, California in the relevant market area in which Mega, a franchisee of the same recreational vehicle line-make, was located, and that the exception provided by subdivision (b)(5) of Vehicle Code section 3072 was inapplicable in the circumstances. On July 30, 2012, following a hearing on the merits of the protest, Judge Hagle issued a "Proposed Decision" sustaining Mega's protest. Judge Hagle found that Roadtrek failed to give Mega timely notice of Roadtrek's intention to establish an additional Roadtrek dealer in the relevant market area in which Mega, a franchisee of the same recreational vehicle line-make, was located, and that the exception provided by subdivision (b)(5) of Vehicle Code section 3072 was inapplicable in the circumstances.

At the Board's regularly scheduled meeting on August 23, 2012, the Public and Dealer Members adopted Judge Hagle's Proposed Decision as the Board's final decision in the matter.

On October 2, 2012, Roadtrek filed a petition in the California Superior Court for Sacramento County, seeking a writ of administrative mandate. The petition asks the court to, (a) declare, decree, and adjudge that the Board prejudicially abused its discretion based on Roadtrek's contention that the Board's finding on Protest No. PR-2233-10 is not supported by substantial evidence in light of the whole record, (b) declare, decree, and adjudge that applicable Vehicle Code sections are unconstitutional as applied under, without limitation, the Commerce Clause, Contracts Clause, and Due Process Clause of the California and United States Constitutions, (c) issue a writ of mandate (judgment) commanding the Board to set aside its decision relative to Protest No. PR-2233-10, (d) award Roadtrek its costs, and (e) grant Roadtrek such other and further relief the Court deems appropriate, proper, or in the interests of justice.

It has been determined that there is no state interest at issue in the writ so the Board will not participate via the Attorney General's Office.

On November 20, 2012, the Court ordered consolidation, for all purposes, of cases numbered 34-2012-80001280; 34-2012-80001281; 34-2012-80001300; 34-2012-80001301; and 34-2012-130525, and the Court designated case number 34-2012-80001280 as the lead case. The Court also ordered the consolidated cases transferred to the Superior Court of California for the County of Orange.

All further reporting of this case will be made under CRT-258-12, below.

7. ROADTREK MOTORHOMES, INC., Plaintiff v. CALIFORNIA NEW MOTOR VEHICLE BOARD, Defendant, MEGA RV CORP, d/b/a MCMAHON'S RV, Real Party in Interest.

California Superior Court, Sacramento County Case No. 34-2012-80001280;
New Motor Vehicle Board Case No. CRT-260-12
Protest Nos. PR-2205-10, PR-2211-10 and PR-2212-10

Protestant Mega filed Protest No. PR-2205-10 with the Board on February 9, 2010 and Protest Nos. PR-2211-10 and PR-2212-10 on February 18, 2010. The protests alleged that Roadtrek failed to fulfill an agreement with Mega to pay Mega's claims under the terms of Roadtrek's franchisor incentive program. On July 26, 2012, following a hearing on the merits of the protest, Judge Hagle issued a "Proposed Decision" sustaining Mega's protests. Judge Hagle found that Roadtrek had failed to fulfill obligations to Mega relative to "franchisor incentive program" claims and that Roadtrek had not timely and appropriately paid approved claims.

At the Board's regularly scheduled meeting on August 23, 2012, the Public and Dealer Members adopted Judge Hagle's Proposed Decision as the Board's final decision.

On October 1, 2012, Roadtrek filed a petition in the California Superior Court for Sacramento County seeking a writ of administrative mandate. The petition asks the court to, (a) declare, decree, and adjudge that the Board prejudicially abused its discretion based on Roadtrek's contention that the Board's findings on Protest Nos. PR-2205-10, PR-2211-10, and PR-2212-10 are not supported by substantial evidence in light of the whole record, (b) declare, decree, and adjudge that applicable Vehicle Code sections are unconstitutional as applied under, without limitation, the Commerce Clause, Contracts Clause, and Due Process Clause of the California and United States Constitutions, (c) issue a writ of mandate (judgment) commanding the Board to set aside its decision relative to Protest Nos. PR-2205-10, PR-2222-10 [sic], and PR-2212-10, (d) award Roadtrek its costs, and (e) grant Roadtrek such other and further relief the Court deems appropriate, proper, or in the interests of justice.

It has been determined that there is no state interest at issue in the writ so the Board will not participate via the Attorney General's Office.

On November 20, 2012, the Court ordered consolidation, for all purposes, of cases numbered 34-2012-80001280; 34-2012-80001281; 34-2012-80001300; 34-2012-80001301; and 34-2012-130525, and the Court designated case number 34-2012-80001280 as the lead case. The Court also ordered the consolidated cases transferred to the Superior Court of California for the County of Orange.

All further reporting of this case will be made under CRT-258-12, below.

8. ROADTREK MOTORHOMES, INC., Plaintiff v. CALIFORNIA NEW MOTOR VEHICLE BOARD, Defendant, MEGA RV CORP, d/b/a MCMAHON'S RV, Real Party in Interest.

California Superior Court, Sacramento County Case No. 34-2012-80001281

New Motor Vehicle Board Case No. CRT-259-12

Protest Nos. PR-2206-10, PR-2208-10 and PR-2209-10

Protestant Mega filed Protest No. PR-2206-10 with the Board on February 9, 2010 and filed Protest Nos. PR-2208-10 and PR-2209-10 with the Board on February 18, 2010. The protests alleged that Roadtrek failed to fulfill its warranty agreement to adequately and fairly compensate Mega for labor and parts used to fulfill warranty obligations of repair and servicing. On July 25, 2012, Judge Hagle issued a "Proposed Decision" sustaining Mega's protests. Judge Hagle concluded that Roadtrek failed to fulfill its warranty agreement to adequately and fairly compensate Mega for labor and parts used to fulfill warranty obligations of repair and servicing, that Roadtrek had failed to provide appropriate notice of its purported approval or disapproval of warranty claims, and that Roadtrek had failed to timely and appropriately pay approved warranty claims.

At the Board's regularly scheduled meeting on August 23, 2012, the Public and Dealer Members adopted Judge Hagle's Proposed Decision as the Board's final decision.

On October 2, 2012, Roadtrek filed a petition in the California Superior Court for Sacramento County seeking a writ of administrative mandate. The petition asks the court to, (a) declare, decree, and adjudge that the Board prejudicially abused its discretion based on Roadtrek's contention that the Board's findings on Protest Nos. PR-2206-10, PR-2208-10, and PR-2209-10 are not supported by substantial evidence in light of the whole record, (b) declare, decree, and adjudge that applicable Vehicle Code sections are unconstitutional as applied under, without limitation, the Commerce Clause, Contracts Clause, and Due Process Clause of the California and United States Constitutions, (c) issue a writ of mandate (judgment) commanding the Board to set aside its decision relative to Protest Nos. PR-2206-10, PR-2208-10, and PR-2209-10, (d) award Roadtrek its costs, and (e) grant Roadtrek such other and further relief the Court deems appropriate, proper, or in the interests of justice.

It has been determined that there is no state interest at issue in the writ so the Board will not participate via the Attorney General's Office.

On November 20, 2012, the Court ordered consolidation, for all purposes, of cases numbered 34-2012-80001280; 34-2012-80001281; 34-2012-80001300; 34-2012-80001301; and 34-2012-130525, and the Court designated case number 34-2012-80001280 as the lead case. The Court also ordered the consolidated cases transferred to the Superior Court of California for the County of Orange.

All further reporting of this case will be made under CRT-258-12, below.

9. MEGA RV CORP, a California corporation doing business as MCMAHON'S RV, Petitioner v. NEW MOTOR VEHICLE BOARD, STATE OF CALIFORNIA, Respondent, ROADTREK MOTORHOMES, INC., Real Party in Interest.
California Court of Appeal, Fourth District, Division 3, Case No. G049534 and G049781
California Superior Court, Orange County Case No. 30-2012-00602460-CU-WM-CJC

Consolidated Case No. 30-2013-00624042-CU-PT-CJC
New Motor Vehicle Board Case No. CRT-258-12
Protest Nos. PR-2244-10 and PR-2245-10

Protestant Mega filed Protest Nos. PR-2244-10 and PR-2245-10 with the Board on July 13, 2010. The protests alleged that Roadtrek violated Vehicle Code section 3070 and should not be permitted to terminate Mega's franchises at its California dealership locations in Scotts Valley (PR-2245-10) and in Colton and Irvine (PR-2244-10).

On July 24, 2012, Administrative Law Judge Anthony M. Skrocki issued a proposed order granting Roadtrek's motion to dismiss Protest No. PR-2245-10. Judge Skrocki concluded that, in light of the circumstances, including the fact that Mega's dealership location in Scott's Valley had not been in operation for over one year and was unlikely to reopen, any decision by the Board on the merits of the protest would not be meaningful and would not effectuate relevant legislative intent.

On July 30, 2012, Judge Hagle issued a "Proposed Decision" overruling Protest No. PR-2245-10. Judge Hagle concluded that the protest was not viable relative to the Irvine location, inasmuch as Mega had closed that dealership location, relocated the dealership to Westminster, California, and there was no franchise for Mega to sell Roadtrek vans from the Westminster dealership. Judge Hagle also concluded that Roadtrek had established good cause to terminate the Roadtrek franchise of Mega at Colton, California.

At the Board's regularly scheduled meeting on August 23, 2012, the Public and Dealer Members adopted Judge Hagle's Proposed Decision and Judge Skrocki's Proposed Order as the Board's final decisions.

On October 2, 2012, Mega filed a Petition for Writ of Administrative Mandamus, in the California Superior Court for Orange County (the Court). The petition seeks a judgment (i.e., writ of mandate), that would, (1) direct and compel the Board to set aside its decisions in Protest Nos. PR-2244-10 and PR-2245-10 dated August 23, 2012, (2) require the Board to sustain those protests and preclude the proposed termination of Mega's Roadtrek franchises with addresses in Colton and Irvine, California, (3) grant Mega an immediate stay of enforcement of the Board's decisions relative to Protest Nos. 2244-10 and 2245-10, (4) order the Board to take no further action relative to the protests pending resolution of the writ petition, (5) award petitioner its costs, and (6) order such other relief as the court may consider just and proper.

It has been determined that there is a state interest at issue in the writ so the Board will participate via the Attorney General's Office.

On November 20, 2012, the California Superior Court for the County of Sacramento ordered, (a) consolidation, for all purposes, of that court's cases numbered 34-2012-80001280; 34-2012-80001281; 34-2012-80001300; 34-2012-80001301; and 34-2012-130525, (b) case number 34-2012-80001280

designated as the lead case, and (c) transfer of the consolidated cases to the Superior Court of California for the County of Orange for consolidation with the instant case - No. 30-2012-00602460-CU-WM-CJC.

In November 2012, Mega requested that the Court issue a Temporary Restraining Order (TRO) staying the operative effect of the Board's Decision. Roadtrek opposed the request and the Court denied the request, without prejudice in the event Mega wished to present the issue in a noticed motion. Mega filed such a motion. On December 14, 2012, the Court heard the motion and took the matter under submission.

On December 19, 2012, Roadtrek's writ petitions were transferred to the Orange County Superior Court. However, the Orange County Superior Court assigned these matters with a different case number, 30-2013-00624042-CU-PT-CJC, and assigned the case to Department C18. On January 17, 2013, Roadtrek filed a Notice of Related Case to inform the Court that a related case is already assigned to Department C20.

On January 16, 2013, Judge David Chaffee, presiding in Department C20 of the Superior Court for the County of Orange, issued a written order denying Mega's motion to temporarily stay enforcement of the Board's "order/decision" with regard to Protest Nos. PR-2244-10 and PR-2245-10 pending the Court's resolution of Mega's Petition for Writ of Administrative Mandamus relative to the same matters. The disputed legal issue pertaining to the motion for temporary stay was whether Code of Civil Procedure (CCP) section 1094.5, subds. (g) or (h) applied. The Court stated that section 1094.5, subd. (g), "allows a stay to be granted as long as the stay is not against the public interest." However, section 1094.5, subd. (h), "requires that, before a stay can be granted, the moving party must show not only that the stay is not against the public interest, but also that the state agency is unlikely to prevail ultimately on the merits."

Although the Court found that Mega, "made a convincing statutory construction argument, contending that the NMVB decisions at issue satisfy the criteria of CCP [section] 1094.5 (h)(1) because they fall under the definition of an 'administrative order or decision of ... [a] state agency made after a hearing required by statute to be conducted under the Administrative Procedure Act ...' and that the decisions at issue satisfy the criteria set forth in CCP [section] 1094.5 (h)(2) because 'the agency ... adopted the proposed decision of the administrative law judge in its entirety,'" the Court ultimately ruled that a stay is inappropriate, based on the facts unique to this dispute.

The Court ruled against a stay, finding that a stay of the Board's decision "would be against the public interest." The Court noted, "the public's interest is best served by preservation of the status quo. The status quo is that Mega has not been operating as a Roadtrek dealership since the end of 2009, while Mike Thompson RV ("MTRV") in Colton has been doing so continuously since March 2010." The Court found that the stay would be against the public interest because "it increases Mega RV's ability to revive and leverage rights that, for all intents and purposes, became dormant approximately 3 years ago."

The Court noted Mega's concern that Roadtrek will attempt to enfranchise a new Roadtrek dealership before Mega's writ petition is decided. However, the Court also noted that "in light of the fact that Mega RV has not been operating as a Roadtrek dealer for the last 3 years, this does not seem to be a valid reason for implementing a stay."

The Court also found that Mega did not satisfy the requirement under CCP section 1094.5, subd. (h) that the state agency is unlikely to prevail ultimately on the merits. Mega argued that the Board, "purportedly proceeded in excess of jurisdiction." However, the Court found that Mega failed to "lay any foundation explaining the applicable standards and legal implications of these purported errors."

On March 1, 2013, Judge DiCesare (Department C-18) held a Case Management Conference (CMC) in case number 30-2013-00624042 (the Roadtrek petitions). Judge DiCesare continued the CMC to April 19. Judge DiCesare said that he would review the related case notice and talk to Judge Chaffee (Department C-20) about the issues relative to the consolidation of this case (number 30-2012-00602460) with the case concerning the Roadtrek petitions (number 30-2013-00624042). Judge DiCesare suggested that the CMC scheduled for April 19 would be taken off-calendar if the Roadtrek petitions case was transferred to Judge Chaffee.

At a Case Management Conference in the instant case on March 6, 2013, before Judge Chaffee in Department C-20, Judge Chaffee confirmed that case number 30-2013-00624042-CU-PT-CJC (the Roadtrek petitions) had been transferred to his Department (C-20) and had been consolidated with the instant case (number 30-2012-00602460). To clarify matters, Judge Chaffee stated that the two cases are deemed related so they will retain their original court case numbers (30-2012-00602460-CU-WM-CJC and 30-2013-00624042-CU-PT-CJC), thus any pleadings filed with the court should reference both case numbers, and as a result all dates scheduled in Department C-18 have been taken off-calendar.

Judge Chaffee gave parties until March 25, 2013, to file a stipulated briefing schedule, and set the hearing for: Tuesday, October 15, 2013, at 9:00 a.m. The parties agreed to the following briefing schedule: Roadtrek's opening brief shall be filed and served by June 17, 2013; Mega's opposition brief shall be filed and served by August 16, 2013. Roadtrek's reply brief shall be filed and served by September 16, 2013.

On March 6, 2013, the Board received notice of Roadtrek's motion to stay enforcement of the Board's administrative orders and decisions in protest numbers PR-2199-10 and PR-2201-10. Following the hearing of the motion on April 12, 2013, and on April 24, 2013, the Court issued its final ruling on the motion, granting Roadtrek's motion to stay enforcement of the Board's administrative orders and decisions in Protest Nos. PR-2199-10 and PR-2201-10, including the Board's referral for an investigation to the Department of Motor Vehicles.

This matter has been fully brief and oral arguments were presented on October 15, 2013. The Judge issued detailed tentative rulings at the beginning of the oral arguments. The tentative rulings are to DENY each of the petitions, with some slight caveats.

On December 18, 2013, Judge Chaffee issued a Minute Order denying all of the writs. On January 7, 2014, the court entered its judgment on the petitions for writ of mandate.

On January 15, 2014, Roadtrek filed a Notice of Appeal. On January 16, 2014, Roadtrek also filed a motion to stay enforcement of the modification decisions. Any opposition to the motion was due no later than January 27. On January 31, 2014, the Appellate Court granted Roadtrek's request for an immediate stay of the Board's modification decisions with respect to Protest Nos. PR-2199-10 and PR-2201-10.

On March 14, 2014, Mega RV Corp. filed a Notice of Appeal. On April 11, 2014, counsel stipulated to consolidate both appeals for purposes of briefing, oral argument, and decision. On May 14, 2014, the court granted Roadtrek's motion to consolidate. The following briefing schedule was established:

- June 18, 2014, Roadtrek's opening brief and appendix (filed)
- August 4, 2014, Mega RV's combined cross-appellant's opening brief and respondent's brief (matter stayed prior to filing)
- September 18, 2014, the NMVB's respondent's brief as to both appeals.
- September 25, 2014, Roadtrek's combined appellant's reply brief and cross-respondent's brief if the Board does not file a brief [due 52 days from the filing of Mega RV's combined brief on August 4 or the Board's brief, whichever is later].
 - November 10, 2014, Roadtrek's combined appellant's reply brief and cross-respondent's brief if the Board files a brief
- November 13, 2014, Mega RV's combined cross-appellant's reply brief if the Board does not file a brief.
 - December 29, 2014, Mega RV's combined cross-appellant's reply brief if the Board files a brief.

The Board does not anticipate filing any briefs in response thereto but will monitor the filings along with Deputy Attorney General KC Jones.

On June 16, 2014, Mega RV Corp filed for Chapter 11 Bankruptcy, United States Bankruptcy Court, Central District. On July 28, 2014, the Court stayed both appeals. An update was submitted to the court on October 27, 2014, indicating the matter is proceeding through bankruptcy. At the Court's request, a Joint Report Re Status of Bankruptcy was filed around January 6, 2015, indicating that Mega RV Corp. remains in Chapter 11 bankruptcy. The largest creditor, GE Commercial Distribution Finance, has agreed to settlement terms that might accelerate the bankruptcy process. However, the case is still pending the Bankruptcy Court's approval and no final orders have been entered.

On April 10, 2015, the Court ordered the parties to inform it by April 20 of the status of the bankruptcy case. On April 14, 2015, the Board received Mega RV's notice of termination of the Bankruptcy stay. The Bankruptcy Court entered an Order Granting Motion for Relief from the Automatic Stay under 11 U.S.C. § 362 on April 8. On May 5, 2015, the Fourth Appellate District Court issued an order that the appeals proceed given the United States Bankruptcy Court granted relief from the automatic stay. Mega RV's combined brief and opening brief were due within 5 days of the date of this order, or May 11, 2015. The parties stipulated to allow these filings on or before June 10, 2015. On or about June 30, 2015, Mega RV's combined Respondent's brief and cross-appellant's opening brief was filed. As indicated above, the Board did not file its brief on August 14, 2015. Appellant's reply brief was filed October 9, 2015. Mega RV's reply brief was filed around November 6, 2015. Oral arguments were heard on May 17, 2016, and the matter was submitted.

The Appellate Court issued an Opinion on July 14, 2016, concluding that it was error to sustain Mega RV's two modification protests (PR-2199-10 and PR-2201-10). The judgment was reversed as to the rulings on the modification protests and the case was remanded to the superior court with directions to enter a judgment setting aside the Board's decisions on these protests and direct the Board to rehear them. In all other respects, the Court affirmed the judgement, which pertains to the warranty reimbursement, franchisor incentive program and establishment protests. The judgment on Mega RV's appeal was affirmed, which pertains to the termination protests.

The staff is working with KC Jones, the Supervising Deputy Attorney General, concerning a timeline for the Board to consider vacating its decisions on the modification protests. It could take 2-3 months before the Board has the judgment from the superior court. On September 15, 2016, the Appellate Court issued a Remittitur, Case Nos. G049534 and G049781. On September 19, 2016, the case was reassigned to the Honorable David R. Chaffee for the purpose of the reversal of the judgment and remanded with directions, as fully stated in the Remittitur.

The Superior Court held a status conference on December 15, 2016. There was discussion about the issuance of a writ of mandate partially remanding the matter back to the Board for further consideration consistent with the court of appeal decision. KC Jones believes the only issue to be decided is whether there needs to be additional evidence at a rehearing or if the Board should simply allow re-argument on the existing record, and apply the rationale set forth in the court of appeal's decision. The parties agreed to language for the "Judgment on Remand from Court of Appeals from Appeal on Judgment on Petition for Writ of Mandate", which was filed with the Court on December 9, 2016, and signed on December 16, 2016. The Writ of Mandate was filed with the Court on December 21, 2016; the writ was signed on February 6, 2017.

A First Return to Writ was filed by the Attorney General's Office on February 24, 2017, notifying the trial court that the Board is meeting on March 15, 2017, to set

aside its October 17, 2012, Decisions in *Mega RV Corp., dba McMahon's RV v. Roadtrek Motorhomes, Inc.*, Protest Nos. PR-2199-10 and PR-2201-10. These Decisions pertain to the modifications of the franchises for Mega RV's locations in Colton and Irvine. A conference call with ALJ Woodward Hagle was conducted on February 28, 2017, to discuss the remand. A briefing schedule was established but subsequently vacated at the Board's request. At the March 15, 2017, General Meeting, the Board set aside and vacated its Decisions in Protest Nos. PR-2199-10 and PR-2201-10. On April 3, 2017, the Second Return to Writ of Mandate was filed by the Attorney General's Office notifying the Court that the decisions were set aside and that the Board ordered further administrative proceedings pursuant to the Decision of the Court of Appeal. On May 18, 2017, counsel for Roadtrek indicated that the parties reached a global settlement and will file a dismissal shortly. Counsel for Mega RV agreed with this representation. *On July 12, 2017, a Stipulation of Dismissal with Prejudice was filed. The Board dismissed both PR-2199-10 and PR-2201-10 with prejudice on July 12, 2017. On July 14, 2017, the Final Return to Writ of Mandate by Respondent New Motor Vehicle Board was filed. Since the protests were dismissed there is no further action required to comply with the terms of the Writ of Mandate. The Board requested that this matter be closed. The Mega RV/Roadtrek cases will be taken off future Executive Director's Reports.*

D.
NOTICES FILED
PURSUANT TO
VEHICLE CODE SECTIONS
3060/3070 AND 3062/3072

NOTICES FILED

PURSUANT TO VEHICLE CODE SECTIONS 3060/3070 AND 3062/3072

JULY 6, 2017, THROUGH OCTOBER 23, 2017

These are generally notices relating to termination or modification (sections 3060 and 3070) and establishment, relocation, or off-site sales (sections 3062 and 3072).

SECTION 3060/3070	No.	SECTION 3062/3072	No.
ACURA		ACURA	
AUDI		AUDI	
BMW		BMW (includes Mini)	
FCA (Chrysler, Jeep, Dodge, RAM)	4	FCA (Chrysler, Jeep, Dodge, RAM)	
FCA (Alfa Romeo, FIAT)	35	FCA (Alfa Romeo, FIAT)	
FERRARI		FERRARI	
FORD		FORD	3
GM	2	GM	
HARLEY-DAVIDSON		HARLEY-DAVIDSON	
HONDA		HONDA	5
HYUNDAI		HYUNDAI	
INFINITI		INFINITI	
JAGUAR		JAGUAR	
KAWASAKI		KAWASAKI	
KTM		KTM	
KIA		KIA	
LEXUS		LEXUS	
MAZDA	3	MAZDA	
MERCEDES		MERCEDES	
MITSUBISHI		MITSUBISHI	
NISSAN		NISSAN	
PORSCHE		PORSCHE	1
SAAB-SCANIA		SAAB-SCANIA	
SUBARU	1	SUBARU	
SUZUKI		SUZUKI	1
TOYOTA		TOYOTA	
VOLKSWAGEN		VOLKSWAGEN	
VOLVO		VOLVO	
YAMAHA		YAMAHA	
MISCELLANEOUS	4	MISCELLANEOUS	9
TOTAL	49	TOTAL	19